

# EXHIBIT I

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

DAVID YANOFSKY,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:16-cv-00-951 (KBJ)
	)	
U.S. DEPARTMENT OF COMMERCE,	)	
	)	
Defendant.	)	
	)	
	)	

**DECLARATION OF ISABEL HILL**

1. I, Isabel Hill, declare under penalty of perjury, that the following statements are true and correct to the best of my knowledge and belief:

2. I am the Director of the National Travel and Tourism Office (NTTO), International Trade Administration (ITA), U.S. Department of Commerce (DOC, Commerce, or the Department). I have held this position since 2013.

3. The purpose of this Declaration is to provide facts related to Plaintiff's FOIA request and information at issue in this case.

4. My statement in this declaration is based on my personal knowledge, information provided to me by employees under my supervision, information obtained by me, and information contained in the records of NTTO. I am personally familiar with Plaintiff's FOIA request at issue in this civil action. I submit this Declaration in response to Plaintiff's Memorandum in Support of Plaintiff's Motion to Enforce Judgement, to clarify for the Court that

the Department of Commerce has complied with Plaintiff's FOIA request by providing those records that are in the possession of Commerce.

### **NTTO STATISTICAL PROGRAM BACKGROUND**

5. The function of the NTTO statistical program is to meet NTTO's legislative mandates to (1) collect and publish comprehensive international travel and tourism statistics and other marketing information; (2) design, implement, and publish international travel and tourism forecasting models; and (3) facilitate the reduction or elimination of barriers to international travel and tourism, as well as to comply with other departmental mandates undertaken by the Bureau of Economic Analysis to produce trade statistics.

6. Specifically, NTTO publishes public reports on non-immigrant travel to the United States, which is defined as those who travel to the U.S. and stay for one night or more for leisure, business, or educational purposes, consistent with the international definition of travel and tourism by the United Nations World Tourism Organization (UNWTO).

7. The travel statistics published and/or sold by the NTTO are extracted from records provided by Customs and Border Protection (CBP) to Commerce or to NTTO's contractor under agreements that provide for data security requirements. The data is anonymized to remove business proprietary information and personally identifiable information,<sup>1</sup> and then aggregated.

8. Revenues from the sale of reports and data files from the I-92 and I-94 programs are used exclusively to offset costs of the NTTO research and statistical programs.

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<sup>1</sup> Personally identifiable information includes information that, if disclosed, could become personally identifiable when paired with other public information.

9. The information below outlines more specifically the mechanics of the NTTO I-92 program and the NTTO I-94 program, and sets forth the actions taken by NTTO to respond to Plaintiff's FOIA request.

**FACTS RELATED TO THE NTTO I-92 PROGRAM: PASSENGER AIR TRAVEL BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES**

10. The I-92 program is a joint effort between CBP and NTTO to provide international air travel statistics data to the government and the travel industry. All carriers servicing the United States must transmit data from their automated flight manifests to CBP for each flight coming to or departing from the United States. The information collected provides non-stop point-to-point air traffic totals between the United States and all other countries and between U.S. and foreign airports. This data provides information on air service passenger traffic, and total travel. It does not segment travelers according to the international definitions of travel and tourism but does provide an indicator of air capacity.

11. CBP provides this data directly to ITA through a secure transmittal process, in accordance with CBP and ITA policies governing the protection of data, including federal security and privacy laws and regulations. With respect to the relevant time period of Plaintiff's FOIA request (2011-2015), data for the I-92 program was transmitted in accordance with the 2002 Memorandum of Understanding between ITA and the Immigration and Naturalization Service (now CBP) ("2002 CBP-ITA MOU"), which addresses the protection of sensitive information.<sup>2</sup> See Exhibit 1, 2002 CBP-ITA MOU. By oral agreement, CBP and ITA have continued to operate under this MOU since its expiration. See Exhibit 2, Email Correspondence

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<sup>2</sup> NTTO was unable to locate a signed version of the 2002 CBP-ITA MOU. I thus have submitted the final version of the MOU as Exhibit 1.

dated September 2018. The data also was transmitted in accordance with Interconnection Security Agreements (ISAs) dated November 2010 and January 2014.

12. Within ITA, the data is received by the Office of the Chief Information Officer (OCIO) of ITA, which processes the data using a program called SQL and converts the data into a format that can be used by NTTO. The original data that CBP sends to ITA is owned by CBP. Processed data is owned by NTTO and can be purchased by clients from NTTO.

13. Once it receives the I-92 data from the OCIO of ITA, NTTO does the following:

- **Processes and Aggregates** the CBP data, including by anonymizing it to ensure that business proprietary information is not disclosed (I-92 data does not contain personally identifiable information), and aggregating daily statistics to monthly figures. NTTO uses this anonymized and aggregated data to create seven tables of information for each time period (monthly, quarterly, annually), each with different parameters. Table Ia, for example, contains data on passenger travel to the United States from foreign countries, with distribution based on scheduled and chartered operation of incoming flights to the United States. Descriptions of the other tables are listed in Appendix I.
- **Publishes on NTTO's Website** summary monthly totals of U.S. citizen travel to international regions.
- **Prepares and Sells Standardized Reports** known as the *U.S. International Air Travel Statistics Report* to clients. These reports are sold in PDF format (also referred to as "printfile" on NTTO's website) and in Excel format. Each report contains the seven tables referenced above and detailed in Appendix I.

- **Prepares and Sells Customized Data Files** that reflect data parameters defined by the client (timeframe, ports of entry, etc.) in the file format requested by the client that can be loaded onto the client's computer, and provides documentation for the interpretation of these data files. As can be seen on the 2015 fees website (*see* Exhibit 3), NTTO has offered for sale two types of Customized Data Files: "Data Files, for internal use only," and "Data Files, for resale." (No "Data Files, for resale" have actually been sold since 2004.)
  - A client may request data in a file format not ordinarily used by Commerce, such as SAS or STATA. The Customized Data File could provide the date of individual flights, which is aggregated in the Standardized Report. A client could also request a Customized Data File containing its own business proprietary information that is not otherwise disclosed. For the Customized Data Files, NTTO considers the parameters requested by the client as business proprietary information.

14. The cost of Standardized Reports and Customized Data Files sold by NTTO with respect to the I-92 program as of 2015 are posted on NTTO's website (*see* Exhibit 3) and are included in Appendix I of this Declaration. Producing Customized Data Files requires a significantly higher level of effort than producing Standardized Reports, including payment to a contractor to compile and program the data, as well as NTTO work on data interpretation documentation, and is therefore sold at a significantly higher cost.

15. As one example, on the website, the "Annual Report (printfile & Excel)" cost \$1,990 in 2015, and the "Data Files, for internal use only" cost \$23,745 for the same year. *See* Exhibit 3, NTTO Website: I-92 Data for 2015. The reason for the difference in price is because the

“Annual Report (printfile & Excel)” is a Standardized Report, whereas the “Data Files, for internal use only” is a Customized Data File. With respect to the Customized Data File, NTTO must work with a contractor to obtain the data in the format and with the parameters requested by the client. Because of the involvement of a contractor, and because such work involves a time-consuming process that requires additional work effort, including providing data interpretation documentation, the Customized Data File costs the client more than the Standardized Report.

**FACTS RELATED TO THE NTTO I-94 PROGRAM: INTERNATIONAL VISITOR ARRIVALS PROGRAM**

16. The I-94 Program is a joint effort between CBP and NTTO to provide travel statistics data in keeping with the international definitions of travel and tourism by the UNWTO, for use by the government and the travel industry. Overseas arrivals data are collected from the I-94 program. Canadian arrivals data are collected by Statistics Canada. Mexico land data are collected by the Instituto Nacional de Estadística y Geografía (INEGI). Mexico air and sea arrivals data are collected from the I-94 Program.

17. CBP securely transmits records directly to NTTO’s contractor. With respect to the relevant time period of Plaintiff’s FOIA request (2011-2015), NTTO’s contractor was CIC Research, Inc. During this time period, data for the I-94 program was transmitted in accordance with the 2002 CBP-ITA MOU, which addresses the protection of sensitive information, as discussed above. *See* Exhibit 1, 2002 CBP-ITA MOU.

18. NTTO’s contractor extracts, aggregates, and anonymizes data relevant to travel and tourism, as defined by the UNWTO. Processing also includes removing duplicate records

and creating the summary tables of monthly data that are found in NTTO's *Summary of International Travel to the United States* report.

19. NTTO's contractor sends these summary tables to NTTO in Excel and PDF formats. The only files NTTO receives from its contractor with respect to the I-94 program are these PDF and Excel summary tables. The original data is owned by CBP. Processed data is owned by NTTO and can be purchased by clients from NTTO.

20. Once NTTO receives the I-94 tables from its contractor, NTTO does the following:

- **Prepares and Publishes to its Website** summary arrivals data, including monthly, quarterly, and annual arrivals data on select high-volume markets (top 50 countries and top 40 ports of entry), which are sorted by other criteria (country of origin, region, etc.).
- **Sells Standardized Reports**, known as the *Summary of International Travel to the United States* report, which contain the summary tables discussed above of international visitor arrivals statistics by world region and select countries (including top 20 countries), type of travel and tourism visa (business, pleasure, student), mode of transportation, age groups, states visited (first intended address only), and the top ports of entry (for select countries). These reports are sold in PDF format (also referred to as "printfile" on NTTO's website) and in Excel format.
- **Sells Customized Reports**, which reflect data parameters defined by the client (timeframe, ports of entry, etc.), in PDF or Excel format, as requested by the client. The client works directly with NTTO's contractor to create the Customized Report, specifying the parameters and the format. For the Customized Reports,



NTTO considers the parameters requested by the client as business proprietary information.

- **Sells Customized Data Files.** NTTO's contractor creates customized data files based on parameters defined by the client (timeframe, ports of entry, etc.) in a format that can be loaded onto the client's computer.
  - A client may request data in a file format not ordinarily used by Commerce, such as SAS or STATA. I-94 clients purchasing Customized Data Files work directly with the NTTO contractor to specify the parameters and the file format. The contractor then creates the data files and the individualized documentation for data interpretation. For the Customized Data Files, NTTO considers the parameters requested by the client as business proprietary information.

21. Producing Customized Data Files requires a significantly higher level of effort than producing Standardized Reports, as well as payment to the NTTO contractor to compile and program the data and provide data interpretation documentation. Customized Data Files are therefore sold at a significantly higher cost.

22. As one example, the "Annual Issue (printfile & Excel)" cost \$1,650 in 2015, and the "Annual datafile" cost \$13,820 for the same year. See Exhibit 4, NTTO Website: I-94 Data for 2015. The difference in price is because the "Annual Issue (printfile & Excel)" is a Standardized Report, whereas the "Annual datafile" is a Customized Data File. In order to obtain the "Annual datafile," the client must work directly with NTTO's contractor to create the data in the format and with the parameters required. Because of the involvement of the contractor, and because such work involves a time-consuming process that requires additional work effort, including

providing data interpretation documentation, the “Annual datafile” costs the client more than the Standardized Report.

### **FACTS OF THIS LAWSUIT**

23. NTTO responded to Plaintiff’s FOIA request by providing the responsive records that originated with NTTO. Appendix III provides a complete list of the files given to Plaintiff. As demonstrated by the email of June 5, 2018, NTTO sent Plaintiff, through an ITA FOIA Officer using the Accellion file sharing software, links to two zip files entitled “I-92 zip,” which contained 35 Excel spreadsheets, and “I-94 zip,” which contained five Excel spreadsheets. The cover letter to this production, which was sent by an ITA FOIA Officer, is attached as Exhibit 5.

- The 35 Excel files related to the I-92 program include seven Excel spreadsheets for each of the five years of data requested by Plaintiff. Each Excel file is a Standardized Report, known as the *U.S. International Air Travel Statistics Report*, as described above. As also explained above, and as detailed in Appendix I below, each year of I-92 data consists of a set of seven tables, each reflecting different parameters. NTTO has produced all seven tables for each year of data requested by Plaintiff, with each table presented in a separate file.
- The five Excel files related to the I-94 program include one Excel file for each of the five years of data requested by Plaintiff. Each Excel file contains the annual report tables NTTO received from its contractor, which make up the Standardized Report, known as the *Summary of International Travel to the United States* report, as described above.

- The cover letter to this production (Exhibit 5) explains that ITA had confirmed that its contractor had retained discs of the I-94 data that CBP had transmitted to the contractor. NTTO directed its contractor to return those discs to CBP, in order to facilitate the responsiveness of CBP to Plaintiff's FOIA request. The records on these discs were being referred to CBP for a disclosure determination and direct response. The referral from ITA to CBP for the I-94 data is attached as Exhibit 6.

24. NTTO has provided the I-92 and I-94 reports for the years 2011 to 2015 that originated with NTTO. NTTO cannot provide a data file for the I-92 and I-94 programs for the years requested, as such records have not been created. In order to create such a data file, NTTO would need to obtain the services of a contractor to create the data file reflecting specified parameters in a file format specified by Plaintiff and then create documentation for data interpretation, as NTTO does with clients that pay for Customized Data Files. Customized Data Files that have been created for clients during the years 2011 to 2015 reflect the parameters requested by the client, which NTTO considers business proprietary information.

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief. Executed on this 21<sup>st</sup> day of November 2018.

A handwritten signature in blue ink, appearing to read "Isabel Hill", written over a horizontal line.

Isabel Hill  
Director, National Travel and Tourism Office

## Appendix I

### The I-92 Program: Standardized Reports and Customized Data Files

#### *I. Standardized Reports*

NTTO sells Standardized Reports of I-92 data comprised of a set of one of each of the seven tables listed below in monthly, quarterly and annual reports. The seven tables are as follows:

1. Table Ia – Passenger Travel to the U.S. from Foreign Countries (distribution by scheduled and chartered operations – U.S. arrivals)
2. Table Id – Passenger Travel from U.S. to Foreign Countries (distribution by scheduled and chartered operations – U.S. Departures)
3. Table Iia – Passenger travel to the U.S. from foreign countries (distribution by U.S. and Foreign Flag carriers – U.S. arrivals)
4. Table Iid – Passenger Travel from U.S. to Foreign Countries (distribution by U.S. and Foreign Flag carriers – U.S. Departure)
5. Table IIIa – Passenger Travel to U.S. ports from Foreign Country ports - U.S. arrivals (Commercial Traffic)-segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
6. Table IIId – Travel from U.S. Ports to Foreign Country Ports – U.S. Departures (Commercial Traffic) segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
7. Table IV – Passenger travel between U.S. and Foreign Countries by country/flag of carrier selected statistics (commercial traffic)

Prices for Standardized Reports sold by NTTO in 2015 are listed in the chart below, and are available on NTTO's website. Each report contains the seven charts listed above, with respect to the relevant time-period.

<b>Type of Report</b>	<b>Single Report</b>	<b>Annual Price</b>
Monthly reports (print file pdf)	\$170	\$1900 for 12 monthly reports
Monthly reports (both print pdf & excel)	\$250	\$2840 for 12 monthly print and 12 monthly excel reports
Quarterly reports (print file pdf)	\$455	\$1710 for four quarterly reports

Quarterly reports (both print pdf & excel)	\$675	\$2560 for four quarterly print and four quarterly excel reports
Annual report (print file pdf)		\$1330 for one annual print file report
Annual report (print file pdf & excel)		\$1990 for one annual print file report and one annual excel report

## ***II. Customized Data Files***

Prices for Customized Data Files sold by NTT0 in 2015 are listed in the chart below, and are available on NTT0's website.

Customized, processed data files for internal use by purchaser	12 monthly reports	\$23,745
Customized, processed data files intended for resale by purchaser		Contact NTT0 to discuss request and for price

## Appendix II

### The I-94 Program: Standardized Reports, Customized Reports, and Customized Data Files

#### *I. Standardized Reports*

Prices for Standardized Reports sold by NTTO in 2015 are listed in the chart below and are available on NTTO's website.

<b>2015 Publications</b>	<b>Annual Price</b>
Monthly <sup>(1)</sup> Subscription (PDF)	\$1,150.00
Monthly <sup>(1)</sup> Subscription (PDF & Excel)	\$2,020.00
Quarterly <sup>(2)</sup> Subscription (PDF)	\$960.00
Quarterly <sup>(2)</sup> Subscription (PDF & Excel)	\$1,770.00
Annual <sup>(3)</sup> Issue (PDF)	\$690.00
Annual <sup>(3)</sup> Issue (PDF & Excel)	\$1,220.00
<b>Combined 2014 &amp; 2015</b>	
Monthly <sup>(1)</sup> Subscription (PDF)	\$1,740.00
Monthly <sup>(1)</sup> Subscription (PDF & Excel)	\$3,070.00
Quarterly <sup>(2)</sup> Subscription (PDF)	\$1,450.00
Quarterly <sup>(2)</sup> Subscription (PDF & Excel)	\$2,610.00
Annual <sup>(3)</sup> Issue (PDF)	\$940.00
Annual <sup>(3)</sup> Issue (PDF & Excel)	\$1,650.00

<sup>(1)</sup> Monthly subscription provides twelve monthly reports-the current month and year-to-date.

<sup>(2)</sup> Quarterly subscription provides a series of four publications (March, June, September and December) which highlight the month and year-to-date.

<sup>(3)</sup> Annual report provides one report with the December and final annual visitor arrival figures.

## ***II. Customized Reports***

Prices for Customized Reports sold by NTT0 in 2015 are listed in the chart below, and are available on NTT0's website.

<b>2015 Custom Reports</b>	<b>Price</b>
Available in PDF, Excel, and Adobe Format	Call NTT0's Contractor for Quote

## ***III. Customized Data Files***

Prices for Customized Data Files sold by NTT0 in 2015 are listed in the chart below, and are available on NTT0's website.

<b>2015</b>	<b>Prices</b>
Annual Datafile	\$13,820.00
Quarterly Datafile	\$15,510.00



### Appendix III

#### Documents That NTTD Sent Plaintiff on June 5, 2018

#### *I. I-92 Data (35 Excel Files)*

Year	Table
2011	Table Ia – Passenger Travel to the U.S. from Foreign Countries (distribution by scheduled and chartered operations – U.S. arrivals)
	Table Id – Passenger Travel from U.S. to Foreign Countries (distribution by scheduled and chartered operations – U.S. Departures)
	Table IIa – Passenger travel to the U.S. from foreign countries (distribution by U.S. and Foreign Flag carriers – U.S. arrivals)
	Table IId – Passenger Travel from U.S. to Foreign Countries (distribution by U.S. and Foreign Flag carriers – U.S. Departure)
	Table IIIa – Passenger Travel to U.S. ports from Foreign Country ports - U.S. arrivals (Commercial Traffic)-segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
	Table IIId – Travel from U.S. Ports to Foreign Country Ports – U.S. Departures (Commercial Traffic) segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
	Table IV – Passenger travel between U.S. and Foreign Countries by country/flag of carrier selected statistics (commercial traffic)
2012	Table Ia – Passenger Travel to the U.S. from Foreign Countries (distribution by scheduled and chartered operations – U.S. arrivals)
	Table Id – Passenger Travel from U.S. to Foreign Countries (distribution by scheduled and chartered operations – U.S. Departures)
	Table IIa – Passenger travel to the U.S. from foreign countries (distribution by U.S. and Foreign Flag carriers – U.S. arrivals)
	Table IId – Passenger Travel from U.S. to Foreign Countries (distribution by U.S. and Foreign Flag carriers – U.S. Departure)
	Table IIIa – Passenger Travel to U.S. ports from Foreign Country ports - U.S. arrivals (Commercial Traffic)-segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
	Table IIId – Travel from U.S. Ports to Foreign Country Ports – U.S. Departures (Commercial Traffic) segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter

	Table IV – Passenger travel between U.S. and Foreign Countries by country/flag of carrier selected statistics (commercial traffic)
2013	Table Ia – Passenger Travel to the U.S. from Foreign Countries (distribution by scheduled and chartered operations – U.S. arrivals)
	Table Id – Passenger Travel from U.S. to Foreign Countries (distribution by scheduled and chartered operations – U.S. Departures)
	Table IIa – Passenger travel to the U.S. from foreign countries (distribution by U.S. and Foreign Flag carriers – U.S. arrivals)
	Table IId – Passenger Travel from U.S. to Foreign Countries (distribution by U.S. and Foreign Flag carriers – U.S. Departure)
	Table IIIa – Passenger Travel to U.S. ports from Foreign Country ports - U.S. arrivals (Commercial Traffic)-segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
	Table IIId – Travel from U.S. Ports to Foreign Country Ports – U.S. Departures (Commercial Traffic) segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
	Table IV – Passenger travel between U.S. and Foreign Countries by country/flag of carrier selected statistics (commercial traffic)
2014	Table Ia – Passenger Travel to the U.S. from Foreign Countries (distribution by scheduled and chartered operations – U.S. arrivals)
	Table Id – Passenger Travel from U.S. to Foreign Countries (distribution by scheduled and chartered operations – U.S. Departures)
	Table IIa – Passenger travel to the U.S. from foreign countries (distribution by U.S. and Foreign Flag carriers – U.S. arrivals)
	Table IId – Passenger Travel from U.S. to Foreign Countries (distribution by U.S. and Foreign Flag carriers – U.S. Departure)
	Table IIIa – Passenger Travel to U.S. ports from Foreign Country ports - U.S. arrivals (Commercial Traffic)-segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
	Table IIId – Travel from U.S. Ports to Foreign Country Ports – U.S. Departures (Commercial Traffic) segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
	Table IV – Passenger travel between U.S. and Foreign Countries by country/flag of carrier selected statistics (commercial traffic)
e2015	Table Ia – Passenger Travel to the U.S. from Foreign Countries (distribution by scheduled and chartered operations – U.S. arrivals)

	Table Id – Passenger Travel from U.S. to Foreign Countries (distribution by scheduled and chartered operations – U.S. Departures)
	Table IIa – Passenger travel to the U.S. from foreign countries (distribution by U.S. and Foreign Flag carriers – U.S. arrivals)
	Table IIId – Passenger Travel from U.S. to Foreign Countries (distribution by U.S. and Foreign Flag carriers – U.S. Departure)
	Table IIIa – Passenger Travel to U.S. ports from Foreign Country ports - U.S. arrivals (Commercial Traffic)-segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
	Table IIIId – Travel from U.S. Ports to Foreign Country Ports – U.S. Departures (Commercial Traffic) segmented by U.S. Citizens/Aliens, Airline Flag, Schedule/Charter
	Table IV – Passenger travel between U.S. and Foreign Countries by country/flag of carrier selected statistics (commercial traffic)

## ***II. I-94 Data (5 Excel Files)***

<b>Year</b>	<b>Description</b>
2011	Annual report tables on international travel to the U.S. meeting international definitions for travel and tourism (containing quarterly and annual data)
2012	Annual report tables on international travel to the U.S. meeting international definitions for travel and tourism (containing quarterly and annual data)
2013	Annual report tables on international travel to the U.S. meeting international definitions for travel and tourism (containing quarterly and annual data)
2014	Annual report tables on international travel to the U.S. meeting international definitions for travel and tourism (containing quarterly and annual data)
2015	Annual report tables on international travel to the U.S. meeting international definitions for travel and tourism (containing quarterly and annual data)